IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 10611 of 2005(L)

PETITIONER:

SUBHASH KIZHAKKEVEETTIL, NEAR P.H.C.,
KANDAMKULANGARA, KUNHIMANGALAM P.O.,
KANNUR DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1. **KERALA PUBLIC SERVICE COMMISSION**
   REPRESENTED BY THE SECRETARY, KERALA PUBLIC
   SERVICE COMMISSION, PATTOM, THIRUVANANTHAPURAM.

2. **KERALA STATE ROAD TRANSPORT CORPORATION**
   REPRESENTED BY THE MANAGING DIRECTOR,
   K.S.R.T.C., THIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
SHRI.JOHNSON P.JOHN, SC, KSRTC
SRI.SAJEEV KUMAR K. GOPAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.10611/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ADMISSION TICKET DT.22.11.01 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P2:- COPY OF THE NOTICE DT.18.6.03 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P3:- COPY OF THE CERTIFICATE DT.24.6.03.

EXT.P4:- COPY OF THE REPRESENTATION DT.5.9.03 SUBMITTED BY THE PETITIONER BEFORE THE UNDER SECRETARY OF KPSC.

EXT.P5:- COPY OF THE CERTIFICATE DT..19.10.02.

EXT.P6:- COPY OF THE JUDGMENT DT.5.2.04 IN WP(C) NO.1185/04.

EXT.P7:- COPY OF THE JUDGMENT DT.11.10.04 IN WP(C) NO.21136/04.

EXT.P8:- COPY OF THE LETTER DT.12.10.04 .

EXT.P9:- COPY OF THE CERTIFICATE OF EXPERIENCE OF THE PETITIONER.

EXT.P10:- COPY OF THE REGISTRATION CLARIFICATE OF M.V.S.SMITHY WORKS.

EXT.P11:- COPP LETTER DT.2.2.05.

EXT.P12:- COPY OF THE NOTIFICATION ISSUED BY THE KPSC DT.20.4.99.

EXT.P13:- COPY OF THE RELEVANT PAGE OF THE SSLC BOOK OF THE PETITIONER.

/TRUE COPY/

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 10611 OF 2005

Dated this the 30th day of March, 2007

JUDGMENT

The question which arises for consideration in this Writ Petition is whether, when a selection notification issued by the Public Service Commission prescribes minimum age limit as well as experience qualifications for the post, the Commission can insist that the experience qualification shall be one obtained by the candidate after he attained the minimum age prescribed for candidature.

2. The petitioner is aggrieved by Ext.P11 order of the 1st respondent- P.S.C rejecting his application for selection to the post of Blacksmith Grade II in the 2nd respondent-K.S.R.T.C. Ext.P2 notice dt.18.6.03 was issued to the petitioner stating that he has not produced certificate regarding the requisite experience in the prescribed form. In response to Ext.P2, petitioner submitted Ext.P3 Certificate dt.24.6.03. Noticing that notwithstanding Ext.P3 his name was not short listed, he submitted Ext.P4 representation and came to know that his non-inclusion was for the reason that the experience certificate produced by him was not in the prescribed form. Seeking inclusion of his name in the short list, petitioner filed WP(C) No. 21136 of 2004 before this Court. That Writ Petition was disposed of by Ext.P7 judgment clarifying that if

the petitioner produces a proper certificate as per the conditions prescribed by the selection notification within one week from that day the P.S.C. will process the same in accordance with law for the purpose of selection. Ext.P9 is copy of the experience certificate which was produced by the petitioner pursuant to Ext.P7. Ext.P10 is copy of the registration certificate pertaining to the institution where the petitioner gained his experience. The petitioner complains that notwithstanding the submission of Exts.P9 and P10 the P.S.C. did not take any decision for a long time thereby compelling him to file a contempt case before this Court. After receipt of notice in the contempt case, Ext.P11 letter has been issued intimating the petitioner of the decision to reject the petitioner's candidature.

3. Impugning Ext.P11 on various grounds the petitioner prays for :

i. a writ of certiorari quashing Ext.P11;
ii. a declaration that the experience acquired by the petitioner is sufficient experience as contemplated in Ext.P12 notification and
iii. a writ of mandamus commanding the 1st respondent to accept Ext.P9 certificate and to include the petitioner's name also in the rank list.

4. The petitioner has subsequently produced Ext.P13 which is copy of the relevant pages of his SSLC book. Ext.P13 will show that the

petitioner's date of birth is 18.4.77 and that he completed 14 years of age on 18.4.91 and further that his experience as per Ext.P9 is for more than 5 years from 1.2.94.

5. The 2nd respondent-KSRTC has filed a counter affidavit stating that the P.S.C. is the authority to decide the issue and that the KSRTC has no role in the matter.

6. On behalf of the P.S.C. a detailed counter affidavit is filed it is stated therein that as per the full text of Ext.P12 notification the clarifications prescribed for candidates applying for selection to the post of Blacksmith Grade II in the KSRTC were 1) Age limit :- must have completed 18 years and should not have completed 35 years of age as on 1.1.99. 2)The educational qualifications prescribed were : (i). ITI certificate in the trade of Blacksmith with not less than 3 years practical experience in general Blacksmithy work or (ii) a. ability to read and write Malayalam, Tamil or Kannada ; b. Proficiency in all works connected with smity and allied trades for a period of 5 years. The qualifications claimed by the petitioner as per his application was SSLC and 5years' experience in Blacksmithy and related trades. Since Ext.P3 experience certificate produced by the petitioner was defective, his application was rejected by the P.S.C. which lead to the petitioner approaching to this Court and this Court delivering Ext.P7 judgment. Pursuant to Ext.P7

petitioner produced Ext.P9 experience certificate and on examining the same it was noticed that the petitioner was having only 4 years and 3 months experience after he attained the age of 18 years. It is contended that since completion of 18 years was one of the basic qualifications prescribed for the post as per the notification, the Commission decided to accept the certificates of only those candidates who have gained experience after they had attained the age of 18 years. Age was a basic qualification and hence it is mandatory that qualification also should be after 18 years. Referring to the Factories Act and various Labour Laws of the State it is pointed out that, persons below the age of majority, i.e. 18 years, is not entitled for doing hazardous job. Persons between the age of 14 and 18 are adolescents who in terms of Section 69 of the Factories Act shall not be allowed to be engaged in any job of hazardous nature unless a fitness certificate is obtained in terms of Section 69 of the Factories Act. Referring to para 21 of the general conditions of the notification it is contended that the experience qualification shall be one gained after acquiring the basic qualification for the post.

7. I have heard the submissions of Sri.Kalleswaram Raj, learned counsel for the petitioner and Sri.P.C. Sasidharan, Standing Counsel for the P.S.C.. Making submissions on the basis of pleadings,

Sri.Kaleeswaram Raj drew my attention to various documents and also to Sections 67 & 69 of the Factories Act. The learned counsel submitted that the P.S.C. did not have a case that the petitioner was physically unfit. Now production of fitness certificate as envisaged by Section 69 of the Factories Act was not the reason on which the P.S.C. rejected the candidature. Citing the judgments of the Supreme Court in **Mohinder Singh Gill and another V. The Chief Election Commissioner, New Delhi and others** [AIR 1978 SC 851] and also **Hindusthan Petroleum Corporation Ltd., V. Darius Shapur, Chenai** [2006 (1) KLT 230 (SC)], the learned counsel submitted that the P.S.C. cannot be permitted to support its orders on a different reason.

8. Mr.Sasidharan placed before me the full text of the Gazette notification published by the P.S.C. and invited my attention to paragraph 21 of the general conditions in para II thereof. He also high lighted paragraphs 18 and 19 of those conditions. He submitted that the notification was the crucial document and as per Clause 21 of the general conditions which were binding on all candidates the experience qualification shall be one acquired by the candidate after acquiring the basic qualifications prescribed for the post. He submitted further that the basic qualification of 18 years of age alone confers eligibility on the candidates to apply for the post. Experience qualification was only

additional qualification which is to be acquired by the candidate after he becomes basically qualified to apply for the post. Mr.Sasidharan referred to the judgment of this Court in WP(C) No.18097 of 2006 and submitted that when a constitutional authority like the P.S.C. has taken up a stand as a general principle, this Court will not be justified in granting relief to the petitioner rejecting the defence of the P.S.C..

9. The relevant para of Clause 21 of the general conditions attached to the original of Ext.P12 notification will be extracted below:

> "Unless otherwise specified, the experience prescribed as qualification for any post in para I of this notification shall be one gained by the candidate holding temporary or regular appointments in Central or State Government service or in Public Sector Undertakings or Registered Private Sector Undertaking after acquiring the basic qualifications prescribed for the post. … ……"

10. A careful scrutiny of Clause 21 of the general conditions will show that the same is a virtual re-production of Rule 10 (ab) of Part II KS & SSR. I find it extremely difficult to accept the argument of the learned Standing Counsel for the P.S.C. that age limit of 18 years prescribed by the notification is a basic qualification for the purpose of Clause 21. The post in question is mentioned as category 72/99 in the notification. Qualifications are prescribed under Clause 7 beneath

category 72/99. Age limit is prescribed separately under Clause 6. Age in my view cannot be qualification for the purpose of the notification. Unlike academic, technical or even experience qualifications, age is not acquired by a person on account for his work or effort. Age is attained by persons due to natural passage of time and there is no contribution from the part of the concerned person for such attainment.

11. As already noticed, Clause 21 of the general conditions in the notification only provides that the prescribed experience qualification shall be acquired by the candidate after acquiring the basic qualification prescribed for the post unless specified otherwise. Even if it is assumed that age is basic qualification for the purpose of Clause 21, then also there are enough indications in the notification itself to accept Mr.Kaleeswaram Raj's argument that the intention of the P.S.C. was that a given candidate could acquire the requisite experience qualification even before he had attained the minimum age of 18 years. The minimum age limit prescribed by the notification is 18 years as on 1.1.99. This certainly pre-supposes the existence of candidates with requisite experience qualification of 5 years prior to the attainment of the minimum age limit. If it was otherwise, the minimum age limit should have been shown as 23 years.

12. The P.S.C. draws a distinction between child, adolescent and

major and relies on Section 69 of the Factories Act in that context. Section 69 of the Factories Act prohibits employment of young children and provides that no child who has not completed his 14th year shall be allowed to work in any factory. There is no such prohibition regarding adolescents who are within the age group of 14 to 18. Section 68 of the Factories Act provides as follows:

> "Non-adult workers to carry tokens - A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless-
>
> (a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and
>
> (b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

13. Section 69 of the Factories Act deals with the fitness certificates to be issued by the certifying surgeon which has to be issued to any young person upon satisfaction that the young person has completed 14th year and has attained prescribed physical standards and he is fit for such work. The P.S.C. does not have a case either in the order rejecting the candidature or not even in the counter affidavit that the petitioner was physically unfit to work during the entire period covered by experience certificate Ext.P9. Going by Ext.P9 it is the

experience during the period from 1.2.1994 till 18.4.1995 alone which relates to the period prior to the petitioner attaining the age of 18. The petitioner belongs to a community traditionally engaged in blacksmithy work. His claim that he has been physically fit during his childhood and even thereafter has not been refuted by the P.S.C. This is not the first time that the writ petitioner approaches this court. In the earlier writ petition the contentions were only regarding the accuracy of the format of experience certificate. Agreeing with the P.S.C. that the certificate produced by the petitioner along with his application was not a proper one, this court under Ext.P7 permitted the petitioner to produce proper certificate within one week and directed the P.S.C. to process the same in accordance with law for the purpose of selection. The present objection that in any event a portion of the experience claimed by the petitioner is after he completed 18 years of age and hence not admissible was not raised by the P.S.C. at that time. The P.S.C.'s order rejecting the candidature of the petitioner only states that the experience claimed by the petitioner was gained by him subsequent to his attainment of 18 years. The P.S.C. is not entitled to support its decision on the reason that the petitioner was not physically fit while he was in the age limit of 14 to 18 and that certificate of fitness as envisaged by Section 69 of the Factories Act is not placed on record.

The contention raised in this regard by Mr.Kaleeswaram Raj has the support of the judgment of the Supreme Court in **Mohinder Singh**'s case(supra). A strict construction of the notification issued by the P.S.C. will show that it does not say that the experience qualification should be after the candidate has attained the minimum age of 18 years. The judgment of K.K.Denesan,J. in WP(C) No. 18097 of 2006 relied on by the Standing Counsel for P.S.C. is not apposite to the facts obtaining in this case.

14. It is true that normally this court will not interfere with decisions taken by the constitutional authorities like the P.S.C. following a general principle. But I find that the general principle followed in this case, to insist on acquisition of experience qualification after the candidate attains the minimum age limit prescribed by the qualification is totally unreasonable, unrealistic and is not reflected in the notification pursuant to which the candidate applied.

The result is that the Writ Petition will stand allowed. Ext.P11 is quashed. It is declared that the experience acquired by the petitioner and certified as per Ext.P9 is sufficient experience as contemplated by Ext.P12 notification for the post applied for by the petitioner. Accordingly, there will be a direction to the first respondent to accept Ext.P9 certificate and do the needful immediately for including the

petitioner's name also in the ranked list. This will be done by the Public Service Commission at the earliest and at any rate within three weeks of receiving a copy of this judgment. The parties will suffer their respective costs.

PIUS C. KURIAKOSE, JUDGE

btt/srd